

§ 48A-15. Financial safeguards when no court order.

(a) Notwithstanding any other statute, for any minor's contract of a type described in G.S. 48A-11 that is not being submitted for approval by the court pursuant to G.S. 48A-12, or for which the court has issued a final order denying approval, fifteen percent (15%) of the minor's gross earnings pursuant to the contract shall be set aside by the minor's employer in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with G.S. 48A-16. At least one parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor, shall be the trustee of the funds set aside for the benefit of the minor, unless the court, upon petition by the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees of the trust, shall determine that appointment of a different individual, individuals, entity, or entities as trustee or trustees is required in the best interest of the minor.

(b) A parent or guardian, as the case may be, entitled to the physical custody, care, and control of the minor shall promptly provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to G.S. 48A-16(c) and in addition, in the case of a guardian, a certified copy of the court document appointing the person as the minor's legal guardian.

(c) The minor's employer shall deposit fifteen percent (15%) of the minor's gross earnings pursuant to the contract within 15 business days of receiving the trustee's statement pursuant to G.S. 48A-16(c), or if the court denies approval of the contract, within 15 business days of receiving a final order denying approval of the contract and thereafter as funds might be received. Notwithstanding any other statute, pending receipt of the trustee's statement or the final court order, the minor's employer shall hold for the benefit of the minor the fifteen percent (15%) of the minor's gross earnings pursuant to the contract.

(d) Once the minor's employer deposits the set-aside funds in trust, in an account or other savings plan pursuant to G.S. 48A-16, the minor's employer shall have no further obligation or duty to monitor or account for the funds. The trustee or trustees of the trust shall be the only individual, individuals, entity, or entities with the obligation or duty to monitor and account for those funds once they have been deposited by the minor's employer. The trustee or trustees shall do an annual accounting of the funds held in trust, in an account or other savings plan, in accordance with G.S. 28A-21-1, et seq.

(e) Upon petition of the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees of the trust, to the superior court in any county in which the minor resides or in which the trust is established, the court may at any time, on good cause shown, order that the trust be amended or terminated, notwithstanding the provisions of the declaration of trust. An order amending or terminating a trust may be made only after reasonable notice to the beneficiary, to the parent or guardian, if any, and to the trustee or trustees of the funds if the beneficiary is then a minor, with opportunity for all parties to appear and be heard.

(f) A parent or guardian, as the case may be, entitled to the physical custody, care, and control of the minor shall promptly notify the minor's employer in writing of any change in facts that affect the employer's obligation or ability to set aside funds for the benefit of the minor in accordance with this section, including, but not limited to, a change of financial institution or account number, or the existence of a new or amended order issued pursuant to subsection (e) of this section amending or terminating the employer's obligations under this section. The written notification shall be accompanied by a true and accurate photocopy of the trustee's statement and attachments pursuant to subdivision (c) of G.S. 48A-16, or a true and accurate photocopy of the new or amended order.

(g) Where a parent or guardian, as the case may be, is entitled to the physical custody, care, and control of a minor who enters into a contract of a type described in G.S. 48A-11, the relationship between the parent or guardian, as the case may be, and the minor is a fiduciary relationship that is governed by the law of trusts, whether or not a court has issued a formal order to that effect. The parent or guardian, as the case may be, acting in his or her fiduciary relationship, shall, with the earnings and accumulations of the minor under the contract, pay all liabilities incurred by the minor under the contract, including, but not limited to, payments for taxes on all earnings, including taxes on the amounts set aside under this section or G.S. 48A-14 and payments for personal or professional services rendered to the minor or the business related to the contract. Nothing in this subsection shall be construed to alter any other existing responsibilities of a parent or legal guardian to provide for the support of a minor child.

(h) With respect to contracts pursuant to which a person is employed to render services as a musician, singer, songwriter, musical producer, or arranger only, "gross earnings" for purposes of this Article means the amount paid directly to the minor pursuant to the contract, including the payment of any advances to the minor pursuant to the contract, but excluding deductions to offset those advances or other expenses incurred by the employer pursuant to the contract. (2003-207, s. 2.)